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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,953	08/03/2006	Achim Ansmann	C 2809 PCT/US	1353
23657	7590	03/05/2009		
FOX ROTHSCHILD LLP 2000 MARKET STREET PHILADELPHIA, PA 19103			EXAMINER SOROUSH, LAYLA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 03/05/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,953

Applicant(s)

ANSMANN ET AL.

Examiner

LAYLA SOROUSH

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 21-25, 30, 31 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 21-25, 30, 31 and 33-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant's arguments over 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) in view of Flick, E.W. ((1991). *Cosmetics Additives - An Industrial Guide*. William Andrew Publishing/Noyes), of record of claims 17,22-25,30,31 and 33-35 are persuasive. Therefore, the rejection of record is herewith withdrawn.

Applicant's arguments over 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) and Flick, E.W. ((1991). *Cosmetics Additives - An Industrial Guide*. William Andrew Publishing/Noyes), as applied to claims 17,22-25,30,31 and 33-35 are above, and further in view of Biatry et al. (US 2003/0125378), of claim 21 is persuasive. Therefore, the rejection of record is herewith withdrawn.

In view of Applicant's arguments the following rejections are now made:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17,22-25,30,31 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) in view of Ash et al. (Specialty Chemicals - Source Book (3rd Edition)).

Gordon teaches cosmetic compositions comprising polyolefins such as dodecene-1 and fatty esters such as octyl palmitate, isopropyl palmitate, isopropyl myristate and others, in the claimed amounts and proportions. See col. 4, lines 29-47; col. 5, lines 35-49; Examples. The compositions may contain additional emollients such as triglycerides. See col. 5, lines 49-68. The compositions of Gordon do not contain mineral oil. See Examples.

The reference does not explicitly teach the claimed kinematic viscosity of the polyalphaolefin nor the ethyl hexyl cocoate.

However, Ash et al. teaches octyl cocoate (ethyl hexyl cocoate) is an emollient useful as a spreading agent, antitackifier in cosmetics, and modifies occlusivity of other material.

The determination of optimal or workable viscosity of the oils by routine experimentation is obvious absent showing of criticality of the claimed parameter. One having ordinary skill in the art would have been motivated to do this to obtain the desired rheological properties of the composition. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the ethyl hexyl cocoate into the composition of Gordon et al. The motivation to make such an incorporation is because Ash et al. teaches ethyl hexyl cocoate is an emollient useful as a spreading agent, antitackifier in cosmetics, and modifies occlusivity of other material. Hence, a skilled artisan would have reasonable expectation of successfully producing a cosmetic which has spreading, antitackifier and modifying occlusivity of other material properties.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) and Ash et al. (Specialty Chemicals - Source Book (3rd Edition), as applied to claims 17,22-25,30,31 and 33-35 are above, and further in view of Biatry et al. (US 2003/0125378).

Gordon and Ash et al. are as applied above.

Gordon does not teach the hydrogenated polyalfaolefin of Claim 21.

However, Biatry et al. teach using hydrogenated polyalfaolefins for the same purpose as non-hydrogenated polyalfaolefins in cosmetic compositions. See [0042]. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Gordon such that to use hydrogenated polyalfaolefin oil instead of non-hydrogenated polyalfaolefin oil. One having ordinary skill in the art would have a reasonable expectation of obtaining the same cosmetic effect as set forth in the Gordon reference because these oils are used interchangeably for the same art-recognized purpose as suggested by Biatry et al. Selection of a known material based on its suitability for its intended use is obvious absent a clear showing of unexpected results attributable to the applicant's specific selection. See e.g., *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) and Ash et al. (Specialty Chemicals - Source Book (3rd Edition), as applied to claims 17,22-25,30,31 and 33-35 are above, and further in view of Cauwet et al. (US 5853708 A).

Gordon and Ash et al. are as applied above.

Gordon does not teach the hydrogenated polyalphaolefin of Claim 21.

However, Cauwet et al. teach using hydrogenated polyalphaolefins (hydrogenated or nonhydrogenated polydecene) for the same purpose as non-hydrogenated polyalphaolefins in cosmetic compositions. See [col 3 lines 25-30]. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Gordon such that to use hydrogenated polyalphaolefin oil instead of non-hydrogenated polyalphaolefin oil. One having ordinary skill in the art would have a reasonable expectation of obtaining the same cosmetic effect as set forth in the Gordon reference because these oils are used interchangeably for the same art-recognized purpose as suggested by Cauwet et al.. Selection of a known material based on its suitability for its intended use is obvious absent a clear showing of unexpected results attributable to the applicant's specific selection. See e.g., *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Response to Arguments

Applicant's argument filed on January 16, 2009 with respect to the Flick reference is persuasive. The rejection of record is herewith withdrawn. See newly modified rejections above.

Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617